IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1716 OF 2005

Hemchand Somnath Gupta ..Petitioner
versus
Shri D. Sivanandhan
Commissioner of Police
& Ors. ..Respondents

Mr. U. N. Tripathi for the Petitioner.
Mrs. A. S. Pai, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
V. K. TAHILRAMANI,JJ.

DATE : 24TH MARCH, 2006

ORAL JUDGMENT :

1. Heard counsel for the petitioner and learned APP for the State.

2. Rule. By consent, Rule is made returnable forthwith.

3. The petitioner is a detenu himself. He is detained under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 ("MPID Act"). The order of detention is dated 28.4.2005.

It is based on two C.Rs. viz. C.R. No. 60/2005 under Sections 354, 323, 504, 506, 427, 34 of I.P.C. at Dombivli Police Station, second C. R. No.74/2005 is under Sections 384, 323, 504, 506 of IPC at the same Police Station.

4. The petitioner has raised many grounds challenging the detention. However, the learned counsel for the detenu pressed only two grounds, viz. grounds 6(D) and 6(E). As per ground 6(D) when there were only two cases registered against the petitioner, as stated above, the petitioner cannot be said to be a habitual offender because according to him both the offences were allegedly committed within a span of 15 days, and therefore, he cannot be categorised as a dangerous person. As per ground 6(E) the petitioner had filed bail application on 5.3.2005 and order was passed therein but the bail order was not supplied to the petitioner. According to Mr. Tripathi, bail application and bail order are vital documents and it was necessary that they were to be placed before the Detaining Authority and copy furnished to the detenu, but since it is not done, it has resulted in non communication of grounds of detention and

affecting the detention, by virtue of Article 22(5) of the Constitution of India.

5. The learned APP on the other hand contended in respect of ground 6(D) that one single incident may not be sufficient circumstances and from that the court may not infer that the detenu is a "habitual offender" but if two incidents have occurred, and, they are of the same type, then the Detaining Authority has rightly regarded the detenu as a "habitual offender" or a "dangerous person". This submission of the learned APP is well founded. Two offences or two incidents on the basis of which two offences were registered, were sufficient to infer that the detenu was "habitual offender" and/or a "dangerous person". Merely because those two offences occurred in the same month within a span of 15 days does not entitle the detenu to contend that he cannot be labelled or treated as a dangerous person. There is no substance in this ground, it is rejected.

6. Regarding ground 6(E), Mr. Tripathi relied upon the judgment of the Supreme Court reported in **1991 Cri. L. J. 3291 Abdul Sathar Ibrahim Manik vs. Union of India and others,** where the Supreme

Court set down their conclusions as under:

(1) A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenu was already in custody.

(2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher Court.

(3) If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as along as the detaining authority was aware of the fact that the detenu was in actual custody.

(4) Accordingly the non-supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.

(5) When the detaining authority has merely referred to them in the narration of events and has not relied upon them, failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the detaining authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India. Whether in a given case the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the Court.

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.

Out of these six directions, direction No. 6 is relied by Mr. Tripathi. But in reply to Ground 6(E), the learned APP pointed out that the Authority has also stated in affidavit that the bail order was not reasoned one, it was not a vital document, and, therefore, non supplying the copy of the same, does not affect the right of the detenu to make

representation.

7. It was the last conclusion of the Supreme Court that was heavily relied upon for the purpose of this petition by Mr. Tripathi. According to him, when the Supreme Court had laid down that the bail application and order granting bail should necessarily be placed before the authority and the copy should be furnished and therefore, when admittedly the copy of the order is not furnished to the detenu and was not before the detaining authority, the same affects the validity of the detention order.

8. As against this, learned APP relied upon the judgment of this Court reported in **2002 ALL MR (Cri) 2148 Usman Gani Yakubali vs. State of Maharashtra & Ors.** decided by one of us, (D. G. Deshpande & A.S. Aguiar, JJ). In that case also the similar submission was made by the Counsel for the detenu. It was contended that the bail order was not a reasoned order and it was three line order granting bail to the detenu and therefore non placement of bail order did not vitiate the detention. In this judgment reliance was placed on

judgment reported in 1995 **Bom.C.R. 78 Iqbal Hasanali Rupani vs. The State of Maharashtra,** wherein it was held that **"in the absence of reasons, it can be certainly said that the bail order could not have affected the subjective satisfaction of the detaining authority either way"**. It is true that in that case the detaining authority in the affidavit has stated that though the bail application and copy was very much placed before him he has not relied upon the same. But that apart, question is when the bail order without any reason and only a three line order, granting bail, non placement thereof results in vitiating the detention.

9. Mr. Tripathi also relied upon another judgment of the **Supreme Court reported in (1990) 2 S.C.C. 1 M. Ahamedkutty vs. Union of India & Anr**. This aspect of the matter was considered by the Supreme Court from paragraphs 19 onwards. In the ground of detention paragraph 3(a)(iii), the detaining authority has stated that detenu was produced before JMFC Kalyan on 5.3.2005, on the same day detenu filed applciation for bail for himself as well as his sister and the bail application was granted and the detenu was ordered to be released on personal bond and surety bond of Rs.15,000/- and

that detenu has fulfilled the formality of the bail and came out on bail. This is the only order of bail passed by the Magistrate. No conditions of any kind were imposed on the detenu. In the judgment of M. Ahamedkutty relied upon, it appears from paragraph 21 that in that case **"The bail application contained the grounds for bail including that he had been falsely implicated as an accused in the case at the instance of persons who were inimically disposed towards him, and the bail order contained the conditions subject to which the bail was granted including that the accused, if released on bail, would report to the Superintendent (Intelligence) Air Customs, Trivandrum on every Wednesday until further order, and that "he will not change his residence without prior permission of court to February 25, 1988."** It is in this background that the Supreme Court held that non supply of bail application and bail order, legal consequences are bound to follow. That was one of the reasons for quashing the detention order by the Supreme Court.

10. The learned APP, however, contended that firstly non supply of bail order would not affect the detention because it was not a reasoned order,

and, secondly, no conditions of any kind whatsoever were imposed upon the detenu. She pointed out from paragraph 3(iii) that the detaining authority has shown his awareness to the bail order dated 15.3.2005 and therefore, according to her, in view of the Judgment of the Division Bench of this Court in Usman Gani Yakubali vs. State of Maharashtra, as stated above, in that case the court considered the case of the Supreme Court reported in AIR 1991 SC 2261 Abdul Sathar Ibrahim Manik vs. Union of India and relied upon judgment reported in 1995 BOM. C.R. 78 Iqbal Hasanali Rupani vs. The State of Maharashtra, referred to above, and held that in the absence of reasons in the bail order, it could not be said that the bail order could have affected the satisfaction of the detaining authority. Therefore, following the said Judgment, we hold that non supply of bail order does not affects the satisfaction of the detaining authority. In the result, petition is dismissed. Rule discharged accordingly.

(D.G. DESHPANDE, J.)

(V.K. TAHILRAMANI, J.)